

MEMORANDUM OF LAW

DATE: September 6, 1995

TO: Afshin Oskoui, Acting Deputy Director, Engineering
Division, Water Utilities Department

FROM: City Attorney

SUBJECT: City's Responsibilities to Property Owners Regarding "Out
of Service" Fire Services Caused by the Water Main
Replacement Program

By memorandum dated August 2, 1995, you report that in a meeting between your Department and the Fire Department, a question arose regarding the City's liability for fire protection during the water main replacement program. Specifically, you request an opinion regarding the City's responsibilities as it relates to:

1. notification of property owners that their fire services will be out of service during the main construction;
2. obligation to maintain active fire services; and,
3. the "24 hour fire watch" requirement.

The California Government Code, sections 850 to 850.6, specifically provides for public entity and public employee immunity in fire protection issues. Section 850 states, "Neither a public entity nor a public employee is liable for failure to . . . provide fire protection service."

This immunity also extends to the situation where fire protection already exists, but is inadequate. According to Government Code section 850.2, "Neither a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities." Furthermore, the City and a public employee acting in the scope of his/her employment has immunity even for an injury resulting from the condition of fire protection or firefighting equipment. Cal. Gov't Code Section 850.4.

These statutory immunities have been upheld by California courts. In one such case, a city employee who closed a water valve to permit relocation of water mains inadvertently left the valve closed for one month after completion of the relocation. Property owners who suffered

fire damage were unsuccessful in their lawsuit against the city, even though the fire damage resulted from an inability to extinguish the fire due to lack of water. *Heieck & Moran v. Modesto*, 64 Cal. 2d 229, 233 (1966). Additionally, in *New Hampshire Ins. Co. v. City of Madera*, 144 Cal. App. 3d 298, 305 (1983), the court held that the immunity conferred by Government Code section 815 extends to a failure to warn property owners of a closed water system valve.

However, the courts have strictly applied the statutory immunities, restricting their application. In one such case, the court did not apply the immunity where the alleged damages resulted from the county's failure to provide fire protection on property owned and managed by the county, and the county permitted a dangerous condition to exist on the property which was alleged to be the "direct and proximate" cause of the damages. *Vedder v. County of Imperial*, 36 Cal. App. 3d 654, 659 (1974).

Thus, where the cause of damage is the result of inadequate or none-existent firefighting ability due to the City's water main replacement program, the City and its employees are immune from liability. Based on this immunity, it follows that there is no legal obligation to maintain active fire services (item 2), or provide a "24 hour fire watch" (item 3). Lastly, as the court held in *New Hampshire Insurance*, 144 Cal. App. 3d at 305, this immunity extends to a failure to warn that fire services will be out of service (item 1). While the above outlines the California law as to immunities afforded by the Government Code, sound policies of customer service counsel continued notification of interruption in service.

JOHN W. WITT, City Attorney

By

Steven B. Gold

Deputy City Attorney

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